

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
CHICAGO REGIONAL OFFICE
175 WEST JACKSON BOULEVARD, SUITE 1450
CHICAGO, ILLINOIS 60604

DANIEL J. HAYES
SENIOR TRIAL COUNSEL

TELEPHONE: (312) 353-3368
EMAIL: HAYESDJ@SEC.GOV

August 19, 2020

Hon. Charles R. Breyer
United States District Judge
San Francisco Courthouse 450
Golden Gate Avenue San
Francisco, CA 94102

**Re: In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices,
and Products Liability Litigation, MDL No. 2672 CRB (JSC).
This Document Relates to: U.S. S.E.C. v. Volkswagen AG,
No. 3:19-cv-1391-CRB**

Dear Judge Breyer:

I would like to bring to your attention two issues that are relevant to the Volkswagen Defendants' Motion to Dismiss (MDL ECF 7349), which is pending before the Court.

First, I would like to correct a mistake in the record, which I discovered earlier this week. At paragraph 112 of the Complaint, and in the Commission's Opposition to the Volkswagen Defendants' Motion (*see, e.g.*, pp. 7, 31), the Commission alleges that a PowerPoint presentation prepared by Volkswagen's ICCT Task Force was emailed to Bernd Gottweis, a senior manager in VW's Quality Assurance department, on April 15, 2014. In fact, it was the ICCT researchers' PowerPoint presentation that was emailed to Gottweis on April 15, 2014. The ICCT researchers used the PowerPoint when they presented their on-road emissions study findings at an industry conference in San Diego, on March 31, 2014. The Commission apologizes for the mistake and intends to amend the

2 | Page
Hon. Charles Breyer
August 19, 2020

Complaint to correct the allegation.¹

Second, I am notifying the Court that, with respect to Count III, the Commission has decided not to pursue its allegation that the failure to record a provision or disclose a contingent liability, pursuant to IAS 37, in the financial statements appended to the May 2014 Offering Memorandum is a basis for Volkswagen's and Volkswagen Group of America Finance's liability under Section 17(a)(2) of the Securities Act of 1933. The Commission is, however, proceeding on Count III with respect to the multiple other materially false and misleading statements and omissions related to the May 2014 bond offering, as well as subsequent bond offerings, and with all other Counts in the Complaint.

Respectfully,



Daniel J. Hayes

cc: Robert J. Giuffra, Jr. (via ECF/CM)
Gregory P. Joseph (via ECF/CM)

¹ The Commission will request, pursuant to Fed. R. Civ. Pro. 15, the Court's permission to file the amended complaint within 14 days (or such other time as may be ordered) after receiving the Court's decision on the motion to dismiss.